

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PATRICIA COLE-TINDALL, in her
official capacity as the King County
Sheriff; and KING COUNTY, a
home rule charter county,

Plaintiffs,

v.

CITY OF BURIEN, a municipal
corporation,

Defendant.

CASE NO. 3:24-cv-00325-RAJ

ORDER

I. INTRODUCTION

THIS MATTER is before the Court on Plaintiffs' Motion for Preliminary Injunction, Dkt. # 7, and Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction, Dkt. # 26. The Court has reviewed the motions, the materials filed in support of the motions, the balance of the record, and the governing law. For the reasons stated below, the Court **GRANTS** Defendant's Motion, Dkt. # 26, and **DENIES** Plaintiffs' Motion, Dkt. # 7, as moot.

II. BACKGROUND

This matter stems from a dispute between Washington governmental entities regarding the constitutionality of a local ordinance. Plaintiffs, King County and Patricia Cole-Tindall, in her official capacity as Sheriff of King County (collectively, “King County Plaintiffs”), initiated this lawsuit in federal court seeking declaratory and injunctive relief. *See* Dkt. # 1; Dkt. # 7. Pursuant to the Interlocal Agreement (“ILA”), King County Sheriff’s Office (“KCSO”) provides law enforcement services to Defendant, the City of Burien. *See* Dkt. # 7 at 2. KCSO has refused to implement one of Burien’s recently enacted ordinances, and King County Plaintiffs now ask this Court to evaluate the constitutionality of that ordinance.

The City Council of Burien adopted Ordinance 832 (the “Ordinance”), titled “Unlawful Public Camping,” on March 4, 2024. Dkt. # 1-5. The Ordinance prohibits the use of nonresidential public property as a living space. *Id.* The Ordinance defines this as, “to camp, dwell, lodge, reside, sleep, or exercise nontransitory exclusive control over any portion of nonresidential public property.” *Id.* The nonresidential public property includes “any Burien park, street, sidewalk, or any other open area where Burien or another governmental agency has a property interest, including easements.” *Id.* The Ordinance provides an exception to the general prohibition when overnight shelter is unavailable, and the use occurs between 7 p.m. and 6 a.m. the following morning. *See id.* Noncompliance with the Ordinance is classified as a misdemeanor offense and may be subject to criminal deferral. *See id.*

In providing law enforcement services to Burien, Sheriff Patricia Cole-Tindall instructed the department not to enforce the Ordinance until “the constitutionality of the ordinance is resolved” because of the “substantial concerns that Burien’s new ordinance violates binding federal case law.” Dkt. # 1 ¶ 4. Plaintiffs contend that the Ordinance

1 violates the Eighth and Fourteenth Amendments of the Constitution.¹ See Dkt. # 1 ¶ 59.
2 Plaintiffs acknowledge that King County Sheriff's Office has not enforced Ordinance
3 832 to date. Dkt. # 28 at 7.

4 Defendant argues the Court lacks subject matter jurisdiction to resolve this matter
5 and moves to dismiss the case pursuant to Federal Rule of Civil Procedure 12(b)(1). Dkt.
6 # 26. Plaintiffs invoke federal question jurisdiction as no diversity exists between the
7 parties, all based in Washington State. Plaintiffs assert this Court has jurisdiction
8 pursuant to 28 U.S.C. § 2201, 28 U.S.C. § 1331, and 28 U.S.C. § 1367. See Dkt. # 1 at
9 ¶ 10. Plaintiffs argue that this "case squarely presents questions of federal constitutional
10 law."² Dkt. # 28 at 20. Defendant raises several arguments in support of dismissal, but
11 the Court will only reach two in the discussion below, Article III limitations on standing
12 and advisory opinions.

13 III. LEGAL STANDARDS

14 A. Federal Rule of Civil Procedure 12(b)(1)

15 Pursuant to Rule 12(b)(1), a complaint must be dismissed if the Court determines
16 at any point that it lacks subject matter jurisdiction over the claims asserted. See *Int'l*
17 *Union of Operating Eng'rs. v. Cnty. of Plumas*, 559 F.3d 1041, 1043-44 (9th Cir. 2009).
18 And if a plaintiff lacks standing, the Court lacks subject matter jurisdiction. See *Steel*
19 *Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101-02 (1998). A Rule 12(b)(1) challenge
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21 ¹ Plaintiffs argue that the Ordinance "is repugnant to the Constitution and the law of this circuit, namely *Martin v.*
22 *City of Boise*, 920 F.3d 584, 618 (9th Cir. 2019) . . . and *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir.
23 2022) cert. granted 144 S.Ct. 679 (2024) (argument set for April 22, 2024)." Dkt. # 7 at 1. On June 28, 2024, the
24 Supreme Court reversed and remanded the decision in *City of Grants Pass*, finding that the enforcement of generally
25 applicable laws regulating camping on public property does not violate the Eighth Amendment. *City of Grants*
26 *Pass, Oregon v. Johnson*, 144 S. Ct. 2202, 2204 (2024). This ruling abrogated the Ninth Circuit's decision in
Martin.

² Plaintiffs attempt to use the Mayor of Burien's statement that the constitutionality of Ordinance 832 "is for judges
to decide" to support the argument that this Court has jurisdiction over this matter. Dkt. # 28 at 1, 7. Plaintiffs'
efforts are misguided. The mayor's words have no bearing on whether a federal court may adjudicate a claim
regarding the constitutionality of a law that has not been enforced.

1 may be facial or factual. Fed. R. Civ. P. 12(b)(1); *see Safe Air for Everyone v. Meyer*,
2 373 F.3d 1035, 1039 (9th Cir. 2004). In a facial attack, such as this one, a defendant
3 asserts a complaint's allegations are insufficient to confer federal jurisdiction. In
4 reviewing such an attack, the Court assumes all material allegations in the complaint are
5 true. *See Thornhill Publ'g Co. v. Gen. Tel. Elec.*, 594 F.2d 730, 733 (9th Cir. 1979).

6 **B. Article III Limitations**

7 The judicial power of the federal courts is limited to "cases" and "controversies."
8 U.S. Const., Art. III, § 2. If there is no case or controversy within the meaning of those
9 constitutional terms, then the court lacks subject matter jurisdiction to hear the claim.
10 *See Baker v. Carr*, 369 U.S. 186, 198 (1962). Thus, a federal court's "role is neither to
11 issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live
12 cases or controversies consistent with the powers granted the judiciary in Article III of
13 the Constitution." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138
14 (9th Cir. 2000) (en banc). The prohibition against issuing advisory opinions stands at the
15 core of Article III's limitation on federal judicial power and underpins the justiciability
16 doctrines of standing, ripeness, and mootness. *See Westlands Water Dist. v. Nat. Res.*
17 *Def. Council*, 276 F. Supp. 2d 1046, 1051 (E.D. Cal. 2003); *see also W. Oil & Gas Assoc.*
18 *v. Sonoma Cnty.*, 905 F.2d 1287, 1290 (9th Cir. 1990) ("The ripeness and mootness
19 doctrines are based in part upon the Article III requirement that courts decide only cases
20 or controversies.").

21 Constitutional standing is a "necessary element of federal-court jurisdiction."
22 *Thomas v. Mundell*, 572 F.3d 756, 760 (9th Cir. 2009). To establish Article III standing,
23 a plaintiff must show that (1) she suffered an injury in fact, (2) there is a causal connection
24 between the injury and the defendants' conduct, and (3) the injury will likely be redressed
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1 by a favorable decision from the Court. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555,
2 560-61 (1992).

3 To have standing to sue in federal court, a plaintiff must allege “such a personal
4 stake in the outcome of the controversy’ as to warrant his invocation of federal-court
5 jurisdiction and to justify exercise of the court’s remedial powers on his behalf.” *Warth*
6 *v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker*, 369 U.S. at 204). Therefore, a
7 plaintiff must suffer an injury in fact, which is “an invasion of a legally protected interest
8 which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural
9 or hypothetical.” *Lujan*, 504 U.S. at 560 (citations and internal quotation marks omitted).
10 For an injury to be particularized, it must affect “the plaintiff in a personal and individual
11 way.” *Id.* at 560 n.1. A plaintiff typically does not satisfy standing requirements where
12 the alleged injury is a “generalized grievance” that is “shared in substantially equal
13 measure by all or a large class of citizens.” *Warth*, 422 U.S. at 499.

14 IV. DISCUSSION

15 The briefing in this matter addresses various justiciability questions. However,
16 the Court need only reach the matters discussed below to reach the conclusion that the
17 Court lacks subject matter jurisdiction to hear this case.

18 A. Article III Standing

19 1. Sheriff Cole-Tindall’s Standing

20 King County Plaintiffs assert that an injury in fact has been established because if
21 the Ordinance is enforced, then Sheriff Cole-Tindall “faces the loss of her certification
22 to work as a police officer,” which Plaintiffs assert is “a constitutionally protected
23 property interest.” Dkt. # 28 at 11. Plaintiffs state that the “conflict between her duty to
24 enforce the law and her equal duty to police in a constitutional manner that cannot be
25 reconciled.” *Id.* at 12. In addition, Plaintiffs also suggest that the Sheriff’s potential civil
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1 liability may provide a basis for standing. *See id.* at 15-16. Defendant asserts that these
2 standing arguments are premised on a false dilemma. Dkt. # 30 at 6.

3 The Ninth Circuit has found that public officials challenging the constitutionality
4 of a law typically do not meet Article III standing requirements where plaintiffs assert
5 standing based on potentially violating their oaths of office and facing civil liability. The
6 Court provides an overview of the relevant caselaw below.

7 In *City of S. Lake Tahoe v. California Tahoe Reg'l Plan. Agency*, the mayor and
8 city councilmembers of the City of South Lake Tahoe (“councilmembers”) sought
9 declaratory and injunctive relief regarding certain land use regulations, regional plans,
10 and transportation plans adopted by the California Tahoe Regional Planning Agency
11 (“Agency”). 625 F.2d 231, 232-33 (9th Cir. 1980). The councilmembers alleged that
12 the regulations and plans violated various federal constitutional guarantees. *See id.* The
13 Ninth Circuit rejected the two theories of standing advanced by the councilmembers.

14 First, the Ninth Circuit rejected an argument that the councilmembers had standing
15 to challenge a law which they refused to enforce. Councilmembers asserted they had
16 standing to raise this challenge because they were “required by law to enforce the
17 [Agency’s] regulations[,]” but if they enforced what they believed to be unconstitutional
18 regulations, the councilmembers “would violate their oaths of office to uphold the U.S.
19 Constitution.” *Id.* at 233 (internal citation omitted). The Ninth Circuit determined that
20 the councilmembers failed to meet Article III standing requirements because “the source
21 of the public official’s complaint” was simply “abstract outrage at the enactment of an
22 unconstitutional law[,]” and that no consequences, thus no injury, would “flow from the
23 violation of the oath in performance of a statutory duty.” *Id.* at 237.

24 Next, the Ninth Circuit also found that a public officials’ “alleged exposure civil
25 liability” was insufficient to show a “concrete injury” for the purposes of standing. *Id.*
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1 at 238. The Court observed there were “multiple contingencies” precluding standing
2 because the challenged law was unenforced, which meant there was “no immediate threat
3 of suit nor reason to believe suit was inevitable.” *Id.* at 239. Further, the Court concluded
4 that possibility of civil liability under Section 1983 was insufficient to support standing.
5 The Court remarked that it was unclear that “an official who personally believes a statute
6 to be unconstitutional, but enforces it anyway, is civilly liable solely on the strength of
7 his subjective concerns.” *Id.* Accordingly, the Court decided that the “threat of civil
8 liability is too attenuated and conjectural to supply the councilmembers with a basis for
9 standing[,]” and that the “claims do not support federal-court jurisdiction.” *Id.*

10 Since the decision in *City of S. Lake Tahoe*, the Ninth Circuit has continued to
11 reject “oath taker standing” claims because they are “not sufficiently concrete to establish
12 Article III standing.” *Drake v. Obama*, 664 F.3d 774, 780 (9th Cir. 2011) (finding an
13 active military personnel’s argument that he may face discipline for obeying the
14 president’s orders was “highly speculative” and his “abstract constitutional grievance”
15 did not meet the requirements of Article III); *see e.g., Thomas*, 572 F.3d at 762 (finding
16 county attorney lacked standing to challenge the constitutionality of a separate state DUI
17 court system created for Spanish and Native American speakers because the claimed
18 injury was “based on the loss of his institutional power . . . not the loss of any private
19 right”); *Escobar v. Brewer*, No. 10-cv-249, 2010 WL 11537784, at *3 (D. Ariz. Aug. 31,
20 2010), *aff’d*, 461 F. App’x 535 (9th Cir. 2011) (relying upon *City of S. Lake Tahoe* and
21 finding a police officer lacked standing to challenge the constitutionality of a state
22 immigration law where the plaintiff claimed non-enforcement of the law could lead to
23 discipline and enforcement could lead to possible civil litigation).

24 Plaintiff Cole-Tindall’s alleged injury that enforcement of Ordinance 832 could
25 “result in her loss of her livelihood” and “law enforcement certification” is premised on
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1 her subjective understanding that the Ordinance is unconstitutional. As Defendant puts
2 it, this alleged injury presents a “false dilemma between enforcing the law generally and
3 enforcing the law constitutionally[,]” and enforcing the law would not risk her
4 certification under Washington law. Dkt. # 30 at 7 (citing RCW 43.101.105(3)(j)(ii)).
5 Sheriff Cole-Tindall’s circumstances are similar to the dilemmas presented in *City of S.*
6 *Lake Tahoe, Drake, Thomas, and Escobar* where courts found civil servants challenging
7 the constitutionality of certain regulations, executive directives, legal systems, and laws
8 did not establish Article III standing. Accordingly, the Court finds that Sheriff Cole-
9 Tindall’s basis for standing is insufficient in this case.

10 **2. King County’s Standing Based on Potential Civil Liability**

11 Plaintiff King County asserts it has established standing for threatened economic
12 injury. *See* Dkt. # 28 at 10. Plaintiffs argue the County “would be open to civil litigation
13 and potential liability pursuant to 42 U.S.C § 1983” if KCSO enforces a facially
14 unconstitutional ordinance. *See id.*

15 The potential financial liability King County may face if KCSO enforces the
16 Ordinance and lawsuits are brought against it under Section 1983 is insufficient to satisfy
17 the injury in fact requirement. Here, a public entity, King County, challenges the
18 constitutionality of a law prior to the enforcement and asserts potential civil liability as
19 an injury to support Article III standing. The second theory of standing rejected by the
20 Ninth Circuit in *City of S. Lake Tahoe* decision, discussed in Section IV.A.1., *supra*,
21 plainly applies in this situation and forecloses standing. Like *City of S. Lake Tahoe*, there
22 are multiple contingencies that have yet to be triggered, such as the enforcement of the
23 Ordinance and defending a lawsuit based on the enforcement of the ordinance. Further,
24 as Defendant points out, “King County faces no financial risk for enforcing the
25 Ordinance” because “the ILA indemnifies King County and its employees from liability
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1 for arresting someone under an unlawful ordinance.” Dkt. # 30 at 7. Accordingly, the
2 Court concludes that Plaintiffs cannot establish standing based on any attenuated
3 potential civil liability in this matter.

4 **3. Conclusion**

5 For the reasons stated above, King County Plaintiffs failed to establish Article III
6 standing to support this Court’s subject matter jurisdiction over this dispute. Even if
7 Plaintiffs could meet the requirements for Article III standing, this Court would still
8 dismiss this matter for lack of subject matter jurisdiction because King County Plaintiffs
9 seek an impermissible advisory opinion.

10 **A. Advisory Opinions**

11 The City of Burien argues that Plaintiffs seek an advisory opinion, thus Plaintiffs’
12 claims are not justiciable. *See* Dkt. # 26 at 16-17; Dkt. # 30 at 2-5. Plaintiffs do not
13 directly address this argument but express disagreement. *See generally* Dkt. # 28. King
14 County Plaintiffs assert this case presents a dispute between parties that have sufficiently
15 adverse legal interests to create a case or controversy ripe for adjudication in federal
16 court. *See generally id.*

17 “The rule against advisory opinions is ‘the oldest and most consistent thread in
18 the federal law of justiciability,’ reflecting the same core considerations that underlie the
19 justiciability doctrine more generally.” *Ctr. for Biological Diversity v. United States*
20 *Forest Serv.*, 925 F.3d 1041, 1047 (9th Cir. 2019) (quoting *Flast v. Cohen*, 392 U.S. 83,
21 96 (1968)). In order not to violate this rule and present a justiciable dispute, a case must
22 satisfy two requirements. First, the case must present “an honest and actual antagonistic
23 assertion of rights by one [party] against another.” *Id.* (quoting *U.S. Nat’l Bank v. Indep.*
24 *Ins. Agents of Am., Inc.*, 508 U.S. 439, 446 (1993)). Second, the Court “must be
25 empowered to issue a decision that serves as more than an advisement or
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1 recommendation.” *Id.* at 1048. “A party does not seek an advisory opinion where
2 ‘valuable legal rights . . . [would] be directly affected to a specific and substantial degree’
3 by a decision from the [C]ourt.” *Id.* (quoting *U.S. Nat’l Bank*, 508 U.S. at 446).

4 It is not the place of federal courts to decide the legality or constitutionality of
5 local ordinances prior to enforcement. *See, e.g., Henschen v. City of Houston*, 959 F.2d
6 584, 589 (5th Cir. 1992) (“It is not this court’s proper role to issue advisory opinions on
7 the facial constitutionality of local ordinances.”); *11126 Baltimore Boulevard v. Prince*
8 *George’s Cnty.*, 924 F.2d 557, 558 (4th Cir. 1991) (finding county sought an
9 impermissible advisory opinion concerning the constitutionality a zoning ordinance in
10 light of a recent decision in an appellate case). The prohibition against advisory opinions
11 is enforced even when a municipality itself has asked a federal court for such guidance.
12 *See, e.g., Associated Gen. Contractors of America v. City of Columbus*, 172 F.3d 411,
13 421 (6th Cir. 1999) (“[T]he City expected the district court to provide an advisory opinion
14 regarding the constitutionality of the ordinance . . . [s]uch an opinion is beyond the power
15 of a federal court to provide.”); *Int’l Soc’y for Krishna Consciousness of California, Inc.*
16 *v. City of Los Angeles*, 611 F. Supp. 315 (C.D. Cal. 1984) (“[A] federal court will not,
17 before the law is applied, declare laws to be constitutional, because by doing so the court
18 would issue advisory opinions.”)

19 King County Plaintiffs’ request for a declaratory judgment improperly seeks an
20 advisory opinion. Plaintiffs ask the Court to advise whether Ordinance 832 violates the
21 United States Constitution and determine whether suspending the enforcement of a
22 facially unconstitutional ordinance would breach King County’s obligations under the
23 ILA. Dkt. # 1 ¶¶ 58-61. The Court understands the parties in this matter honestly dispute
24 the constitutionality of Ordinance 832. However, the legal rights that King County
25 Plaintiffs assert against the City of Burien are nebulous. King County Plaintiffs
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1 essentially ask this Court to advise whether they can avoid civil liability in the event of
2 enforcement and non-enforcement of Ordinance 832. The Court opining on this matter
3 would amount to an impermissible advisory opinion and overstep Article III limitations.
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5 **V. CONCLUSION**

6 For the reasons stated above, Plaintiffs have not established the requirements of
7 Article III standing, thus the Court determines it does not have subject matter jurisdiction
8 to hear this case. Accordingly, the Court **GRANTS** Defendant's Motion to Dismiss.
9 Dkt. # 26. The Court **DENIES** Plaintiffs' Motion for Preliminary Injunction as moot.
10 Dkt. # 7.

11 Dated this 24th day of September, 2024.

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15 The Honorable Richard A. Jones
16 United States District Judge
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